

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DARRELL GUNN,

Plaintiff,

**DECLARATION OF
TIMOTHY PERRY**

-vs-

16-CV-6206

CHAD BESCLER, et al.,

Defendants.

TIMOTHY PERRY, pursuant to 28 U.S.C. §1746, declares under penalty of perjury under the laws of the United States of America that the foregoing is true and correct:

1. I have been employed as a correction officer by the New York State Department of Corrections and Community Supervision (DOCCS) for 14 years, and I have been assigned to Elmira Correctional Facility (“Elmira”) for approximately 12-1/2.

2. I respectfully submit this declaration in support of Defendants’ Motion for Summary Judgment, and I make the statements herein based on my personal knowledge or based upon documents that have been created by, provided to, and/or reviewed by me.

3. Elmira is a maximum-security correctional facility that houses hundreds of convicted felons.

4. At the times at issue in this lawsuit, my daily job duties included conducting random searches of inmates for weapons and other contraband.

5. On March 29, 2013 and June 11, 2013, I pat frisked the plaintiff, inmate Darrell Gunn, DIN 03B2443, along with other inmates who were going to program areas and recreation.

6. I did not frisk plaintiff because of anything he previously said or wrote.

7. I frisked plaintiff as part of a random search of inmates traveling in that part of the prison at that time of the day.

8. Frisking is necessary to the safety of a maximum correctional facility. Inmates are known to carry contraband including weapons, drugs, noxious substances, etc. Regular frisking of inmates is necessary for institutional security by finding contraband and deterring others from carrying contraband which improves safety for both staff and inmates.

9. These concerns are particularly present during recreation, when inmates come in contact with one another and it can be difficult for staff to have eyes on everyone.

10. Even if an inmate passes through a metal detector without setting it off, a pat frisk is appropriate because not all contraband sets off the alarm. Inmates are known to carry drugs and weapons made from nonmetal materials, such as sharpened plastic pens or toothbrushes.

11. My frisks of plaintiff on March 29, 2013 and June 11, 2013 were done in a professional and thorough manner. They were conducted in the same manner as all of my frisks. When I pat frisk an inmate, I wear state-issued pat frisk gloves and I pat down above the clothing the inmate's entire body, including their arms, legs, torso, neck, buttocks, and genital area. I am feeling for anything that may be contraband.

12. Although I do not like frisking an inmate's buttocks and genitals, frisking those areas of an inmate is necessary to do a thorough frisk. Inmates hide weapons, drugs, and other contraband inside their buttocks and genital areas.

13. I did have to come in contact with plaintiff's buttocks and genitals through his clothing, but I did not do this for sexual gratification.

14. I had absolutely no intention of penetrating Plaintiff's rectum, and I am unaware of that having happened on either occasion. I doubt it would even be possible through all the layers of fabric.

15. I did not sexually or physically assault Plaintiff at any time, including on March 29, 2013 and June 11, 2013.

16. I respectfully request that the claims against me be dismissed.

[Signature Page Follows]

Dated: February 16, 2021
Elmira, New York

s/ Timothy Perry
TIMOTHY PERRY

CERTIFICATE OF SERVICE

I certify that on February 18, 2021, I electronically filed the foregoing Declaration of Perry with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. n/a

And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. **Darrell Gunn**
03-B-2443
SING SING CORRECTIONAL FACILITY
354 Hunter Street
Ossining, NY 10562-5498

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants

s/ Heather L. McKay
HEATHER L. MCKAY
Assistant Attorney General of Counsel
NYS Office of the Attorney General
144 Exchange Boulevard, Suite 200
Rochester, New York 14614
Telephone: (585) 546-7430
heather.mckay@ag.ny.gov